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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/783,298	02/15/2001	Dietmar Zielke	31512-168762	2635

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EXAMINER

HALPERN, MARK

ART UNIT

PAPER NUMBER

1731

DATE MAILED: 02/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/783,298

Applicant(s)

ZIELKE, DIETMAR

Examiner

Mark Halpern

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 January 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-16 and 18-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-16 and 18-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1) Acknowledgement is made of Amendment received 1/10/2003, Paper No. 9. Applicant amends claims 1, 4, 16, 18, 19, 20, cancels claims 3, 17, and offers new claims 24, 25, for consideration.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2) Claims 1-2, 4-6, 16, 18-19, 25, are rejected under 35 U.S.C. 102(b) as being anticipated by Stiller (4,598,721).

Claims 1-2, 4-6, 16, 18-19: Stiller discloses an apparatus and a method of processing tobacco dust where the tobacco dust (in addition to binders, water and additives) is first collected into a rotating mixer 12 and then funneled into an extruder 20. The tobacco dust is compacted in the extruder and then extruded. The extruded dust has agglomerated under pressure into a filiform intermediate product at 24, and then is cut by a rotating blade 26 to form crimped fibres pieces, which are tobacco particles. The tobacco particles are of size greater than the original tobacco dust. The size monitoring of the tobacco particles is built in to the design and operation of the process (Abstract, col. 3, lines 29-38, col. 3, line 63 to col. 5, line 59, and Figures 1-9).

Claim 25: Stiller discloses particle sizes from 0.4 to 3 mm (col. 3, line 31).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3) Claims 7-15, 20-23, are rejected under 35 U.S.C. 103(a) as being unpatentable over Stiller and Steiniger (4,373,538).

Claims 7, 20: Stiller is applied as above for claim 1, Stiller fails to disclose the steps of making a rod-like tobacco filler and embedding the particles in the filler. Steiniger discloses an apparatus and a method of making rod-like tobacco filler from two sources: fresh tobacco and recycled "short tobacco" (Abstract, col. 1, lines 6-22, col. 2, lines 1-68, and col. 9, lines 46-60). It would have been obvious to combine the teachings of Stiller and Steiniger by adding the dust particles of Stiller with the "short tobacco" stream of Steiniger, because such a combination would provide an improved apparatus and method of adding recycled tobacco dust particles to the cigarette manufacturing process and reduce the cost of the process.

Claims 8-15, 21-23: means and process of sifting of the mixture, means and process of admixing in incremental amounts of the "short tobacco" to the fresh tobacco and removal device are disclosed by Steiniger. The monitoring of the filler and

additional particles is controlled by the operation of the process and design of the apparatus (col. 7, line 5 to col. 9, line 14, and Figure 1).

4) Claims 1, 24, are rejected under 35 U.S.C. 102(b) as being anticipated by Keritsis (4,341,228). Keritsis discloses tobacco dust being collected and agglomerated into particles of greater size. This agglomeration does not include extruding the gathered dust into the particles (col. 2, line 57 to col. 3, line 10).

Response to Amendment

5) Applicant's arguments filed 1/10/2003, have been fully considered but they are not persuasive.

Applicant alleges that the cited prior art, Stiller, uses an extruder to form larger particles, and that extruding does not constitute agglomeration, i.e., to form larger particles by gathering smaller particles together. As discussed in the specification, the preferred embodiment of the present invention forms the larger particles by subjecting the smaller particles to elevated pressures.

The argument is not well taken. The present specification on pg. 7, lines 9-10, recites "The processing step can include extruding gathered dust." Also, the present specification on pg. 24, lines 12-16, recites "In accordance with a modification, the agglomerating device can be replaced by or utilized interchangeably with a suitable extruder". The above recitations clearly indicate that the agglomeration process to form larger particles is an equivalent process to subjecting the smaller particles to

elevated pressures. In any event, in an extruder the smaller particles are compacted and subjected to elevated pressures. The rejection over Stiller is appropriate.

Conclusion

6) Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

7) Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Halpern whose telephone number is 703-305-4522. The examiner can normally be reached on Mon-Fri, (9:00-5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Griffin can be reached on 703-308-1164. The fax phone numbers

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for the organization where this application or proceeding is assigned are 703-308-7718 for regular communications and 703-305-3599 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.

MH

Mark Halpern
Patent Examiner
Art Unit 1731

February 15, 2003


STEVEN P. GRIFFIN
SUPERVISORY PATENT EXAMINER
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